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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AO77

Medications Prescribed by Non-VA Providers

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation concerning filling prescriptions written by non-VA providers for veterans of a period of war who are receiving increased pension because they are permanently housebound or in need of aid and attendance. This rulemaking revises the regulation to reflect the current statutory periods of war to ensure that eligible veterans engaged in current and future conflicts receive medications prescribed by non-VA physicians when appropriate for their care.

DATES: Effective Date: This final rule is effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kristin Cunningham, Director, Business Policy, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, D.C. 20420; (202) 461-1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1712(d), VA is required to furnish prescription drugs and medicine ordered by a duly licensed physician to a veteran as a specific therapy in the treatment of any illness or injury suffered by a veteran who is receiving increased compensation under 38 U.S.C. chapter 11 or increased pension as a veteran of a period of war, by reason of being permanently housebound or in need of regular aid and attendance. VA implemented this authority in 38 CFR 17.96(a)(1), which authorizes VA pharmacies (or non-VA pharmacies in State homes under contract with VA for filling prescriptions for patients in State homes) to fill prescriptions ordered by duly licensed providers not employed by VA for the cohort of veterans described in the statute. In order to assist in identifying wartime veterans in receipt of increased pension, the language of § 17.96(a)(1) listed those periods of war recognized at the time of its publication, which were the Mexican Border Period, World War I, World War II, the Korean Conflict, or the Vietnam Era. In contrast, the statutory authority for this regulation, 38 U.S.C. 1712(d), refers only to “a veteran of a period of war,” without setting forth specific periods by name. Since this regulation was published, the United States has become engaged in additional conflicts. Because VA does not intend to deny these prescription services to veterans of later periods of war and has not done so, we are revising this regulation.

“Period of war” is defined in 38 U.S.C. 101(11) to mean “the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.” In order to ensure that our

regulation comports with the statutory mandate that VA fill prescriptions for all increased pension recipients who are veterans of a period of war, including current and future periods of war, we are revising § 17.96(a)(1) to cross-reference the statute, rather than list each period of war. We are also revising the authority citation at the end of § 17.96. We are not making any other changes to the text in § 17.96.

#### Administrative Procedure Act

The Secretary of Veterans Affairs (Secretary) finds good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment. This amendment merely revises VA's regulation to comply with a statutory mandate that VA provide medications prescribed by non-VA providers to increased pension recipients who are veterans who served in wars after Vietnam under the same conditions as those who served in earlier periods of war. Therefore, a prior opportunity for notice and comment is unnecessary. Additionally, for the reason previously stated, the Secretary finds good cause to dispense with the delayed-effective-date requirement of 5 U.S.C. 553(d).

#### Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures on this subject are authorized. All VA guidance must be read to conform

with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

#### Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will directly affect only VA pharmacies and non-VA pharmacies in State homes under contract with VA for filling prescriptions for their patients. The State homes that are subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated and managed by State governments except for a small number that are operated by entities under contract with State governments. These contractors are not small entities. Moreover, the impact of this rulemaking on these entities will be minimal because the rulemaking affects only certain wartime veterans in receipt of pension and merely authorizes VA to provide prescriptions for such veterans. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

## Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this final rule are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of

Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, approved this document on July 9, 2013, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Dated: July 11, 2013

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Robert C. McFetridge,  
Director, Regulation Policy and Management,  
Office of the General Counsel,  
Department of Veterans Affairs.



For the reasons stated in the preamble, VA amends 38 CFR part 17 as follows:

PART 17 -- MEDICAL

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

2. Revise § 17.96(a)(1) and the authority citation at the end of the section to read as follows:

§ 17.96 Medication prescribed by non-VA physicians.

\* \* \* \* \*

(a) \* \* \*

(1) A veteran who by reason of being permanently housebound or in need of regular aid and attendance is in receipt of increased compensation under 38 U.S.C. chapter 11, or increased pension under § 3.1(u) (Section 306 Pension) or § 3.1(w) (Improved Pension), of this chapter, as a veteran of a period of war as defined by 38 U.S.C. 101(11) (or, although eligible for such pension, is in receipt of compensation as the greater benefit), or

\* \* \* \* \*

(Authority 38 U.S.C. 101(11), 1706, 1710, 1712(d))

